



SIRC MYSURU CHAPTER

e-Magazine



September 2022
221st Edition

Vision

"To be a global leader in promoting good corporate governance"

Motto

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Mission

"To develop high calibre professionals facilitating good corporate governance"

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CS A HARSHA
CHAIRPERSON
MYSURU CHAPTER

B

ear Professional Colleague

Hope this month was spent well as we had so many auspicious occasions. Let Lord Ganapathi shower his blessings of good health, abundant knowledge, wealth and endless happiness...on us all.

Jains have a traditional festival called Paryushan Parv.... which coincides with Ganesh Chaturthi seeks forgiveness from everybody and says to forgive everyone. By doing so...all the indifferences between people patch up and lets our soul feel free. A soul too finally get rid of the cycle of births and deaths needs to get detached from all kinds of emotions, feelings and karmas. I join my hands, bow before you all and ask for "Forgiveness" for the harm caused knowingly, unknowingly, in thoughts, by words or deeds... and also that I forgive all and hold no hatred feelings towards anyone.

Sharing about Our events we had celebrated The 75th Independence day Azadi Ka Amrit Mahotsav in a grand Manner as it was our honour to have Colonel Manish Prasad Commanding officer Karnataka battalion Mysuru group NCC as a Chief Guest for the Independence day celebration who has been a part of Kargil War and has served in major borders. They are the real time heroes. Feeling of gratitude to all the participants and the parents who were the part of this patriotic occasion.

Half day students program was conducted on 8th of this month where about 30 students from Maharani's College participated along with our CS students. We also had a workshop at the end of the event which was thoroughly enjoyed by all the participants. It was a great experience even for me to handle the "Public Speaking skills Session" for them.....

As a part of teachers day celebrations... we will be having 2 days of Teachers' conference as our future event very soon

I'm seeing the excitement and dedication in the eyes of our student for "Umang 2022". I wish them all the very best and request all our members to support and guide them to the right path.

"There is beauty and power in unity. We must be united in heart and mind. One world, one people". – Lailah Gifty Akita



THE INSTITUTE OF
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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(Under the jurisdiction of Ministry of Corporate Affairs)

Editorial Team

CS Vijaya Rao

CS Parvati K.R

CS Ajay Madhaiah

CS Madhur N Agrawal

CS Harsha A (Chapter Chair)

Support team

Mr. Komal Kumar M

Ms. Mathruka B.M.

Ms. Aparna U

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ONE DAY ORIENTATION PROGRAM

S No	Date	Topic	Speaker	No of Participants
1	20.08.22	One Day Orientation Program for Executive Students	CS Reshma A N. Dhanabal	22



Independence Day Celebrations



On 15th August, 2022 Chapter celebrated Independence Day in Chapter Premises. Col Manish Prasad, Commanding Officer, 14 Karnataka Battalion NCC Mysore hoisted the National Flag & delivered the Independence Day address. Around 30 Members & Students of participated in the event.

Students Felicitation

A felicitation program was arranged on 15th August, 2022 for the winners and participants of competitions held during Student Month Celebrations July 2022 and Southern India Regional Conference of Student Company Secretaries held at Bengaluru Chapter on 06th & 07th August, 2022. CS Harsha A, Chairperson welcomed the gathering. Col Manish Prasad, Commanding Officer, 14 Karnataka Battalion NCC Mysore was the chief guest for the program & issued the prizes for the students.



Career Awareness Program

Chapter organized 10 Career Awareness Program during the month. The detail are as follows.

S. No	Date	College Name	Resource Person	No of Students
1	03.08.22	Hardwickie Independent Pre University College	CS Harsha A N. Dhanabal	70
2	16.08.22	Maharani's Commerce & Management College – M.Com	CS Harsha A N. Dhanabal	60
3	17.08.22	Mahajana PG Centre	N. Dhanabal	60
4		SDM PU College		90
5	19.08.22	D Banmaiah's Evening College	N. Dhanabal	50
6	22.08.22	Maharani's Commerce & Management College – MBA	CS Harsha A N. Dhanabal	60
7		JSS PU College, Udayagiri	N. Dhanabal	60
8	24.08.22	JSS PU College, Vijayanagar	N. Dhanabal	60
9		JSS PU College, Bannimantap	N. Dhanabal	90
10	26.08.22	JSS PU College, J P Nagar	N. Dhanabal	150



Is the Future of the CS Profession a Dual Recognition as Governance Professional and Company

Introduction

William Shakespeare said "What's in a name? That which we call a rose by any other name would smell just as sweet." Poetry and the Company Secretary Profession may have little in common. Still, this line is more relevant than ever to address whether company secretaries should thread the path of governance professionals. Experts feel that the current terminology, 'company secretary' does not adequately capture and reflect what a company secretary typically does under the Companies Act, 2013 and other legislations.

The question of becoming a Governance Professional is not just a change in the name of the profession of Company Secretaries. It is a question about the future of the CS profession. Will a decision to embrace the governance role help the profession thrive many decades down the line?

This question should be addressed from a macro business environment perspective. New realities like the complexity of corporate scams, business disruption by pandemics, massive technological disruption like A.I, ML, 5G, Web 3.0, the changing world order, and climate change exist today. These realities must be considered while debating the question of embracing the role of governance professionals.

World over, company secretary bodies are now moving to transform into governance professionals. United Kingdom, Australia, New Zealand, Hong Kong¹, and Southern Africa² have transitioned to governance professionals in the last few years. In light of the international developments and India's rise in the world, is it the time for India and ICSI to take this step to transition to governance professionals?

This article attempts to analyse this question from multiple angles; first, let us understand the history of company secretaries before contemplating its future.

Global History of Company Secretaries

The history of the 'company secretary', 'chartered secretary' is fascinating. In 1891 in London that 18 company secretaries formed 'The Institute of Secretaries of Joint Stock

“

-The ICSI had written to the Corporate Affairs Ministry suggesting that its members be designated as “governance professionals”. With much groundwork done in 2013, including writing to the central government, the ICSI is ready to make this transition in terms of experience and expertise and with the highest competence it has always showcased.”

CS Alok Ganathan
B.A.L., LL.B., FCS
Email ID: alok@alegal.co.in



¹ <https://www.tricorglobal.com/blog/evolution-from-company-secretaries-to-governance-professionals>

² https://www.engineeringnews.co.za/article/cssa-rebrands-as-cgisa-2020-04-17/rep_id:4136

Companies³. The members of The Chartered Institute of Secretaries of Joint Stock Companies and other Public Bodies were known as Chartered Secretaries. Since manufacturing was the primary industry, all the secretaries worked for factories and trading companies. The history of company secretaries in India from 1968 and the statutory body ICSI from 1980 is well documented and known to the CS fraternity in India. The term “company secretary” is commonly used in the United Kingdom and other commonwealth countries like India. In the United States, Canada, Eastern Europe, and post-USSR countries, the term “corporate secretary” is more common⁴. Corporate Governance is a subsequent discipline to company secretarial work.

Who is a Governance Professional?

A governance professional has a primary role in safeguarding the organisation's integrity, designing the compliance framework, devising compliance management systems and ensuring the highest ethical standards and good corporate culture⁵. Governance professionals have a significant impact on the level and quality of corporate governance and governance culture within a company⁶. A governance professional works directly with the board, promoters and top management by facilitating the best governance practices of the organisation. They establish an effective system of governance with the executive management team of companies to ensure fulfilling compliance and ethical standards⁷. What is very exciting is that the present functions⁸ of company secretaries in India overlap with most of the roles of governance professionals.

Compliance v/s Governance - What is the Difference?

Compliance is a subset of the larger discipline of Governance. Compliance is the adherence to the laws and regulations in a certain legal jurisdiction, for instance, the Companies Act, 2013, in India. Whereas governance is a larger concept which embodies ethics, culture, financial honesty, effective management, good leadership etc. Governance sets the tone for the entire company's attitude to risk, ethics and business practices. Compliance embodies that attitude concerning specific laws and regulations⁹. The people who manage companies have the responsibility to implement good governance. These people should apply the governance structures and policies to create a culture of good governance in the organisation. Governance and Compliance are part of the same discipline. This is a big advantage to the CS profession, which has already showcased expertise in compliance management. Governance is the next logical step for the company secretaries of India.

Why should ICSI Seriously Consider Governance and become Governance Professionals?

1. Need for Governance Professionals in India and Abroad:

Corporate scams are getting complicated and more complex each year. Good corporate governance is one of the most effective preventive measures to combat corporate fraud. Governance professionals are the experts at good governance. The demand for governance professionals is at an all-time high across the globe¹⁰.

³ <https://www.cgiglobal.org/about-us/our-history/>

⁴ International Finance Corporation, Washington, DC, (2016). Corporate Secretary, The Governance Professional (pp 2-6). Handbook

⁵ https://www.taxmanagementindia.com/visitor/detail_article.asp?ArticleID=5356

⁶ <https://www.governanceinstitute.com.au/resources/what-is-governance/what-do-governance-practitioners-do/>

⁷ www.cgi.org.uk/professional-development/discover-governance/

⁸ Section 203, 204 and 205 of the Companies Act, 2013

⁹ <https://www.diligent.com/insights/entity-governance/the-correlation-between-corporate-governance-and-compliance>

¹⁰ https://assets.ey.com/content/dam/ey-sites/ey-com/en_cn/topics/risk/ey-roles-of-governance-professionals-en.pdf

2. Harmonising with the Global Trends:

No institution can live in isolation in a globalised world. The global economy is primarily intertwined, and institutions must be in tune with it. Reflecting the critical role good governance plays in the performance of companies, global bodies representing company secretaries are transitioning to governance professionals. The ICSI, also a founding member of the Chartered Secretaries International Association (CSIA), will massively benefit from this global trend by embracing the more prominent role of the governance profession.

Table Showing CS Institutes across the Globe Moving towards Governance ¹¹

Year of Rebranding	Region	Institute's Role & New Name Reflecting Governance Profession
2013	Australia	Governance Institute of Australia
2014	New Zealand	Governance New Zealand Inc
2019	UK	The Chartered Governance Institute
2020	Southern Africa (Botswana, Lesotho, Namibia, South Africa and Eswatini)	The Chartered Governance Institute of Southern Africa
2021	Hong Kong (China)	The Hong Kong Chartered Governance Institute
2021	Zimbabwe	Chartered Governance and Accountancy Institute in Zimbabwe

3. Scope and Growth of the CS Profession Internationally:

Indian professionals in every field are in high demand globally. Company Secretaries cannot leverage international opportunities as the role is limited to Indian law. The governance profession will open the doors to global opportunities for cs members of India.

4. Support the Government of India Initiatives:

The Govt of India has adopted the slogan of 'minimum government and maximum governance'. Further, the government is pitching for ease of doing business and simplifying legal procedures for companies. Compliance will change with EODB and artificial intelligence, and machine learning. For instance, ICSI's advisory to members asking them to simplify all communication in legal documents to investors has referred to the CS members as governance professionals¹². The spirit of this advisory shows the positive intent of ICSI to take a more prominent role in society as governance professionals.

5. The C-Suite Role for Company Secretaries:

If Company Secretaries are indeed eyeing the role of C - Suite professionals in the corporate world, they will have to go beyond the role of KMP. Governance Professional is the golden key to C - suite roles for ICSI members as the value added to a company is much larger and directly impacts the business's success.

¹¹ <https://www.cgiglobal.org/about-us/our-history>

¹² ICSI's Advisory to members dated 27th July 2022

Dual Designation of Governance Professional and Company Secretary:

The most smooth transition would be to leverage the existing position of a CS and get trained for a new role as a governance professional. For this to happen, the dual designation of Corporate Governance Professional and Company Secretary is the best path to achieve a win-win situation. The Hong Kong CG Institute awards its members dual qualifications as Governance Professional and company secretary qualifications. This has many advantages like

- No dilution of the role of Company Secretary
- Time for training and upskilling of members
- Opportunity to take time for rebranding and re-positioning
- Members can choose to remain as Company Secretaries only
- Protecting the recognitions to CS profession under various laws

ICSI's Unique Competence to Achieve the Transition to Governance Professionals

Responding to the need of the times has been the strength of ICSI. History shows us that from 1980 to 2022, the ICSI has been instrumental in reinventing itself to meet the needs of the corporate world and the expectations of regulators and other stakeholders. From being a body of professionals to transforming into a professional body of international repute, ICSI has always done it and can do it again with the transition to becoming governance professionals. Amazon Founder Jeff Bezos said, 'What's dangerous is not to evolve'¹³. To stay relevant with the times and to be future-ready, ICSI will benefit enormously by evolving into governance professionals while not letting go of their expertise as company secretaries.

In 2013, ICSI initiated this debate of being rechristened as governance professionals. The ICSI had written to the Corporate Affairs Ministry suggesting that its members be designated as "governance professionals".¹⁴ With much groundwork done in 2013, including writing to the central government, the ICSI is ready to make this transition in terms of experience and expertise and with the highest competence it has always showcased.

Taking Inspiration from The Institute of Cost Accountants of India

In 2012, The Institute of Cost and Works Accountants of India (ICWAI) was renamed 'The Institute of Cost Accountants of India'¹⁵ (ICAI). The name change was to help cost accountants working in India and abroad, being recognised by a common designation by which similar members were known throughout the globe. Later, in 2021 the same The Institute of Cost Accountants of India appealed to Finance Minister Nirmala Sitharaman to rename their institute as 'The Institute of Cost and Management Accountants of India'¹⁶. This request was made because the profession is known as Cost and Management Accountants worldwide.

The institute of cost accountants is a sister profession of ICSI. It falls under a similar legal structure and regulation of the government. When the cost accountants have successfully rebranded themselves once and attempting it a second time now, the ICSI has a lot to get inspired and take a similar path to become governance professionals.

¹³ <https://www.fastcompany.com/1569357/jeff-bezos-whats-dangerous-not-evolve>

¹⁴ <https://www.thehindubusinessline.com/news/education/rename-company-secretaries-as-governance-professionals-icsi/article23115239.ece>

¹⁵ <https://pib.gov.in/newsite/PrintRelease.aspx?relid=79727> shorturl.at/gilN7

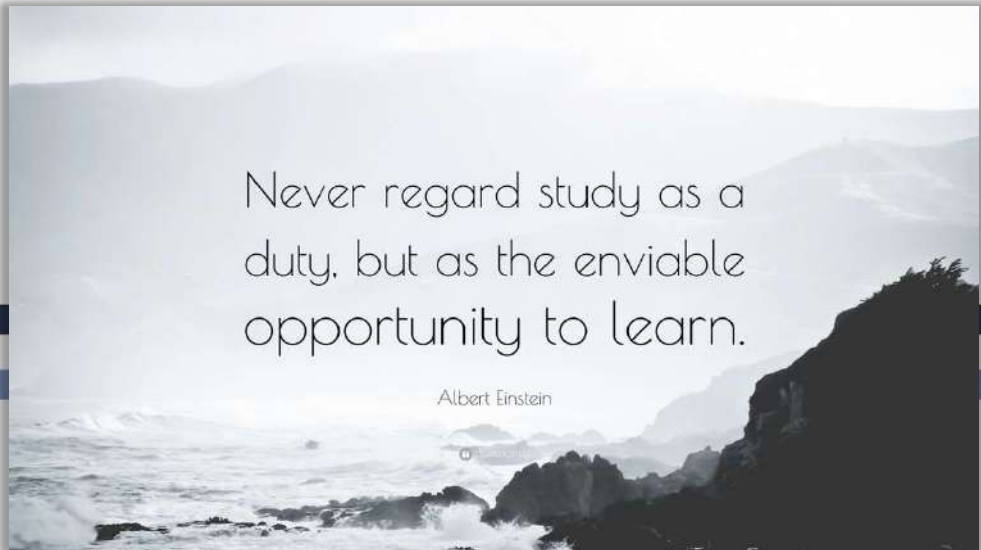
¹⁶ <https://www.thehindubusinessline.com/news/education/icai-seeks-name-change-to-institute-of-cost-and-management-accountants-of-india/article33840943.ece>

ICSI's Time to take Decisions with a Vision for 50 Years.

In 2017, the ICSI released a vision 2022 document to align with the 75 years of India's independence in 2022. Goal No.7 of that document states that the institute will endeavour to globalise the CS profession¹⁷. This question of whether to walk the talk on governance professionals being discussed in 2022 is an apt time. The best way to meet this goal and globalise the profession is to thread the path of governance professionals. This is because governance professionals have broader scope & applicability when compared to compliance. The ICSI is also a founding member of the Chartered Secretaries International Association¹⁸. With all these factors, this can be an excellent time for ICSI to decide to keep a 50 years future of the profession in focus. Most people will agree that a 50 years vision cannot be limited to compliance only.

Conclusion

Governance Profession is the logical growth trajectory for Company Secretaries, as shown by many international CS bodies globally. ICSI has opened up the debate at a great time when the world is changing. Change is not easy, and science shows that humans are hardwired to resist change. Part of the brain—the amygdala—interprets change as a threat and releases the hormones for fear, fight, or flight¹⁹. The essence of Corporate Governance is transparency, accountability, investor protection, better Compliance with statutory laws and regulations, value creation for stakeholders and societal value. Indian Company Secretary with multiple skill sets with experience is perfectly poised to become Governance Professionals. It is just a matter of time before company secretaries upgrade their new skills to ensure they are a match fit for this new era of corporate governance as governance professionals. It is time for company secretaries to move from the backseat of compliance to the front seat of strategy.



Never regard study as a
duty, but as the enviable
opportunity to learn.

Albert Einstein

¹⁷ https://www.icsi.edu/media/webmodules/Vision_New_ICSI_2022.pdf

¹⁸ <https://csiaorg.com/about-us/history/>

¹⁹ <https://www.emersonhc.com/change-management/people-hard-wired-resist-change#>

Discretionary Powers of NCLT U/s. 7 of IBC

Section 7 of IBC, 2016, confers a right upon the financial creditor(s) to file an application for initiation of Corporate Insolvency Resolution Process (CIRP) against a Corporate Debtor (CD) before the Adjudicating Authority (NCLT) in the event of a default committed by the CD and this right can be exercised by a financial creditor either by itself or jointly with other financial creditors in respect of a debt due of a sum of minimum Rs. 1 crore or more after the notification dated 09.04.2021 issued by the Central Government in exercise of its powers under Sec. 4 of IBC, 2016. As we are aware, that the claim of the financial creditor may include 'interest' since as per Sec. 5(a) of IBC the definition of the term 'financial debt' includes a 'debt along with interest' and only in respect of a financial debt due and default committed by the Corporate Debtor the right conferred under Sec. 7 of IBC can be exercised by a financial creditor.

A plain reading of Sec. 7(5) indicates that the Adjudicating Authority, if satisfied, in an application filed under Sec. 7 that there exists a financial debt and a default then it can proceed to admit such application filed under Sec. 7 of IBC or else it can reject the application and this has been the thumb rule followed by the NCLT in a Sec. 7 application ever since it came into force w.e.f. 01.12.2016 provided the application is in order and that there is no disciplinary proceeding pending against the proposed Resolution Professional.

Recently, the Hon'ble Supreme Court while dealing with an appeal preferred under Sec. 62 of the IBC had delivered a very interesting judgement which made the eyebrows raise to both the professionals in this field and the corporate sector which are parties concerned in the IBC proceedings, since, the reason as indicated above, the common understanding by all with respect to a Sec. 7 application is that upon existence of a financial debt followed by a default and upon satisfaction of the threshold limit the normal expectation is that the Adjudicating Authority would admit the application. However, the Hon'ble Supreme Court in the case of "Vidarbha Industries Power Limited v. Axis Bank Limited" decided on 12.07.2022 reported in '2022 SCC ONLINE SC 341' has held that the Adjudicating Authority must exercise its 'discretion' before allowing an application under Sec. 7 of IBC.

In short, the facts of the case is that an application was filed by a financial creditor namely 'Axis Bank Limited' against the corporate debtor 'Vidharbha Industries Power Limited' before the NCLT, Mumbai for initiation of CIRP since the corporate debtor had committed a default in repayment of a financial debt. The Adjudicating Authority (NCLT) admitted

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The learned counsel

also referred to the inherent powers of the NCLT under Rule 11 of the NCLT Rules and upon a conjoint reading of Sec. 7(5)(a) of IBC with Rule 11 clearly indicates that the NCLT has got a discretionary power to either admit or not to admit an application under Sec. 7 for initiation of CIRP against a corporate debtor despite there being a default committed by the corporate debtor.”

R. Rajesh
B. Com, LLB
Advocate
Email ID: rrajeshadvocate@gmail.com



the application filed under Sec. 7 of IBC against which an appeal was filed by the corporate debtor before the NCLAT. The NCLAT dismissed the appeal on the ground that there is no justification in stalling the process and seeking stay of CIRP which in essence had manifested in blocking the passing of order of admission of the application under Sec. 7 of IBC. The NCLAT further held that there is no merit in the appeal and also there is no legal infirmity in the impugned order and the flow of legal process cannot be permitted to be thwarted on considerations which are anterior to the mandate of Sec. 7(4) & (5) of IBC.

Against the said order of NCLAT, this appeal was preferred before the Hon'ble Supreme Court under Sec. 62 of IBC. During the course of proceedings, it was contended on behalf of the appellant (CD) that due to extraordinary circumstances the corporate debtor could not repay the dues to the financial creditor since the corporate debtor is unable to realise a sum of Rs. 1,730 crores which is due and payable by a debtor to the corporate debtor. The learned counsel also pointed out a valuable distinction between Sec. 7(5)(a) and Sec. 9(5) of IBC. Under Sec. 7(5)(a), the term used is 'may' whereas under Sec. 9(5) it uses the word 'shall' which according to the learned counsel was that since the legislature has purposefully used the term 'may' under Sec. 7(5) and the word 'shall' under Sec. 9(5) indicates that a discretion is conferred upon the Adjudicating Authority to reject an application U/s. 7 even if there is a debt and default in existence. The learned counsel also referred to the inherent powers of the NCLT under Rule 11 of the NCLT Rules and upon a conjoint reading of Sec. 7(5)(a) of IBC with Rule 11 clearly indicates that the NCLT has got a discretionary power to either admit or not to admit an application under Sec. 7 for initiation of CIRP against a corporate debtor despite there being a default committed by the corporate debtor. Therefore, the contention was that

the power under Sec. 7(5)(a) that of the NCLT is not mandatory and it is only discretionary in nature. The learned counsel for the financial creditor while referring to the judgment of the Hon'ble Supreme Court in 'Swiss Ribbons case' contended th at Sec. 7(5)(a) of IBC cast a mandatory obligation on the Adjudicating Authority to admit an application under Sec. 7 once it is satisfied that the corporate debtor is in default in repayment of financial debt and in this case the amount outstanding from the corporate debtor to the financial creditor is about Rs. 553 crores. The learned counsel for the financial creditor also



referred to the SC judgment in 'Innoventive Industries Limited vs. ICICI Bank' to argue that the objective of IBC was to provide a framework for expeditious and timebound insolvency resolution. Hence S.7 (5)(a) is necessarily to be construed as mandatory in the light of the objects of the IBC.

The Hon'ble Supreme Court after hearing the arguments in detail from both the sides and after due consideration of the provisions under Sec. 7(5) and Sec. 9(5) of IBC has elaborately discussed in its judgment regarding the powers of the Adjudicating Authority under Sec. 7 of IBC and the manner in which the said power is to be exercised by the authority. In the present case, the SC has stated that both the Adjudicating Authority (NCLT) and the Appellate Tribunal (NCLAT) proceeded on the premise that an application must necessarily be entertained under Sec. 7(5)(a) of IBC if a debt existed and the corporate debtor was in default of payment of debt. In fact, the finding of the Adjudicating authority that Sec. 7(5)(a) of IBC is construed to be mandatory and the same has been affirmed by the NCLAT. The SC therefore narrowed down the issue as to whether Sec. 7(5)(a) is a mandatory or a discretionary provision. The SC observed that the NCLT had failed to take into consideration of the fact that there is a claim of Rs. 1,730 crores by the corporate debtor against one of its debtors and in the event of an award passed in favour of the corporate debtor the said amount

would be more than enough to cover the claims of the financial creditor. Therefore, the fact that the NCLT had disregarded the claims of the corporate debtor against its debtor of a sum of Rs. 1,730 crores as it would be extraneous to the matters involved in the Sec. 7 application has been negated by the Hon'ble Supreme Court. The SC in this judgement has also widely discussed with regard to the expressions 'may' and 'shall' and its applicability by applying the basic principles of interpretation i.e., 'the rule of literal interpretation' as held by the SC in another case 'Lalitha Kumari Vs. Government of Uttar Pradesh' and the said discussion is worth reading so as to understand the meaning of the terms 'may' and 'shall' from the legal point of view.

The SC has further held that the legislature has consciously differentiated between financial creditors and operational creditors as there is an innate difference between financial creditors in the business of investment and financing, and operational creditors in the business of supply of goods and services. The Apex Court further observed that the financial strength and nature of business of financial and operational creditors being different the provisions of IBC relating to commencement of CIRP at the behest of the operational creditor whose dues are undisputed, are rigid and inflexible. On the other hand, in the case of the financial debt there is a little more flexibility. It is certainly not the object of the IBC to penalise solvent companies which are temporarily defaulting in repayment of its financial debts, by initiation of CIRP. The SC, therefore, held that S.7(5) of IBC confers discretionary powers of the Adjudicating Authority to admit an application of a financial creditor for initiation of CIRP against a corporate debtor.

The Hon'ble Supreme Court further held that the judgment of SC in 'Swiss Ribbons case' did not consider the question of whether Sec. 7(5)(a) of IBC is mandatory or discretionary. Eventhough, Sec. 7(5)(a) of IBC may confer discretionary power on the Adjudicating Authority, such discretionary power cannot be exercised arbitrarily or capriciously. If the facts and circumstances warrant exercise of discretion in a particular manner, discretion would have to be exercised in that manner. The Adjudicating authority should normally admit a petition unless there are good reasons not to admit the petition and it has to consider the grounds made out by the CD against admission, on its own merits. For example, when admission is opposed on the ground of existence of an award or a decree in favour of a CD, and the awarded/decretal amount exceeds the amount of the debt, the Adjudicating Authority would have to exercise its discretion to keep the admission of the application in abeyance unless there is a good reason not to do so. The Adjudicating Authority may, for example, admit the application of the Financial Creditor, notwithstanding any award or decree, if the Award/Decretal amount is incapable of realisation. In the present case, the Adjudicating Authority has simply brushed aside the case of the appellant that an amount of Rs. 1,730 Crores was realizable by the Corporate Debtor in terms of the order passed by the Appellate Tribunal for Electricity in favour of the Corporate Debtor.

Conclusion:

The aforementioned judgment of the Hon'ble Supreme Court has opened up a scope of defence to the Corporate Debtors to resist an application filed U/s. 7 of IBC on the ground of valid reasons for rejecting the application on merits. Post this Judgment of the Hon'ble Supreme Court the approach towards a Sec. 7 application by the Adjudicating Authority would slightly get tilted in favour of the Corporate Debtor whenever a serious objection is raised on merits against admitting an application for CIRP and it cannot be easily brushed aside upon only considering the existence of financial debt and default committed by the Corporate Debtor. Therefore, any order/degree/award in favour of the Corporate Debtor including pending proceedings wherein the claim of the CD against a third party is more than the amount outstanding from the CD to the FC would play a vital role in the decision making process of the Adjudicating Authority as it is expected to exercise its 'discretion' so as to decide whether to admit or reject an application filed U/s. 7 of IBC.

Opportunities for CS Professionals in RERA

The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'RERA' or 'Act') came into existence and was effective on and from 1st May 2016 with aims to protect the home purchasers, boosts the real estate investments and also to facilitate transparency in the home buying process in India. On the effective date ie. 01st May, 2016, 61 sections were notified out of 92 sections and all the other remaining 31 provisions were effective on and from 1st May 2017.

The Real Estate (Regulation and Development) Act, 2016 ("The Act") establishes a Real Estate Regulatory Authority (RERA) in each state of the county to regulate & monitor the Real Estate sector in accordance with the provisions as mentioned under the RERA Act, 2016 and also to act as adjudicating body for speedy dispute resolution.

The Real Estate Regulatory Authority (RERA) Bill {"the Bill"} was introduced in the year 2013. The bill was passed on 10 March 2016 by the Rajya Sabha and by Lok Sabha on 15 March 2016. The RERA bill received assent of the President on 25th March, 2016 and published in e-gazette notification On 26th March, 2016.

RERA was enacted to deal with the following issues/challenges faced by Developers/Buyers:

- Highly decentralized operations and inconsistent governance practices across the industry value chain
- Ensuring Translucency in the real estate sector concerning the sale of flats, apartments, plots, buildings, or any kind of real estate project.
- Need for timely and simplified approvals from Competent Authorities
- Delays in Project Completion
- Establishing an adjudicating mechanism for speedy dispute redressal.
- Liquidity and lack of financing of Projects in the NBFC crisis

It has been observed that RERA helped to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector so that sale of real estate projects can be undertaken in an efficient and transparent manner. It was also enacted to protect the interest of consumers in the real estate sector. According to RERA, to govern the functioning of regulators, each state and union territory will have its own set of rules and regulators. The RERA is one such legislation which along with providing the transparency in the real estate transaction have sufficiently given boost the amicable solution of dispute.

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-Section 56 of the Act authorizes the Company Secretary to provide Representative Services under the Act by appearing before the Appellate Tribunal or the Regulatory Authority or the adjudicating officer, as the case may be on behalf of the Client”

CS Lalit Rajput
Practising Company Secretary
Email ID: lalitrajput537@gmail.com



CS Khushbo Mahesh Laji
DJ Mediaprint & Logistics Limited
Email ID: khushboomahesh@gmail.com



RERA – An Emerging Opportunity for Company Secretary Professionals

Company Secretaries are the torch bearers of corporate governance and compliance in any organisation and their role goes beyond corporate law. Modern and industrialized era has transformed the corporate world to the core. The role of Company Secretary is more pronounced and recognized in practicing arena with Audits, due diligence and Compliance Reports under various statutory laws. Additionally, the Company Secretary has been entrusted with the certification various documents and act as authorized Representatives before various Regulatory Authorities including RERA.

The company secretary profession has also obtained new dimensions from being conscience keeper to compliance officer, governance professional, advisor, strategist for the growth of a corporate, etc. Presently, the CS profession has achieved a significant position in corporate world by stepping in a leadership role in guiding the corporates for the success and sustainable growth.

Real estate is a very important sector for a country's growth and the current status is really bad with every day hundreds of complaints being lodged against different bodies of real estate due to which there has been immense opportunity to the practising professionals such as Chartered Accountants, Cost and Management Accountants, Advocates and Company Secretaries in RERA consultancy. These professionals can render services to Developers, Agents and Buyers under RERA. The purpose of RERA practice should be to guide and educated people related to real estate in an organised manner. The professionals are providing consulting services to the promoters and the agents to get registered under RERA.

Section 56 of the Act authorizes the Company Secretary to provide Representative Services under the Act by appearing before the Appellate Tribunal or the Regulatory Authority or the adjudicating officer, as the case may be on behalf of the Client. Further, Company Secretary may also provide following services:

- Registration procedure and filing of application
- Extension of Registration
- Opening of escrow accounts, wherever required
- Preparation, vetting and registration of various agreements for ex. Sale deed/Sublease deed, Conv
- Drafting filing of complaints/appeals including e-filing
- Project fund planning before registration including initial funding & promotion
- Representing case on behalf of clients
- Proving various compliance related certificates
- Seeking necessary approval from various statutory authorities
- Drafting and Vetting of various legal contracts / agreements
- Taking necessary approval and insurance – As per RERA regulation, the builder or developer is required to take all the necessary approvals and insurance, as required by State laws. RERA regulations relating to insurance are very confusing and shall require detailed research.
- Filing of Complaints under RERA: “Complaints, may be against promoters, allottees and/or real estate agents, can be filed within the prescribed time limit under the provisions of Section 31 of the Real Estate (Regulation and Development) Act, 2016, either with the Real Estate Regulatory Authority or the adjudicating officer, in the form prescribed under the respective states’ rules.



Company Secretary as Consultant under RERA:

Company Secretary (CS) may also provide their professional Excellency services to the stakeholders - Home Buyers, Builders, and Government, in the form of RERA consultant. With expert knowledge of the RERA provisions and advisory services, CS will protect home buyers & create an eco-system wherein they get maximum benefits from this Act and can also help to the builders to safeguard their interest from the buyers who purposely delay the due payments.

Company Secretaries are already playing a pivotal role in Real Estate Sector with sound knowledge of real estate, regulatory procedures, finance, investments belonging to any profession ranging from finance, law, taxation, accountancy, advisory, business management etc. They can give their expert opinion on advertising brochure.

Due Diligence activity can also be carried out to ensure the Compliance status. Due diligence is an investigative process and also pre-emptive tool to assess a business transaction. Due diligence under the Act, may be conducted to gather information and then to verify the ownership of title over the property and any encumbrances over the property, to protect one against pre-existing claims over the property. By conducting due diligence, the risks associated with the property to be purchased, can be assessed. This process will help to ensure that whether any legal encumbrances on the property or not.

Following are the Opportunities Provided under the Act to Company Secretaries:

1. Representation of the case before the Regulatory Authority or the adjudicating officer, as the case may be, under the RERA Act;
2. Drafting and vetting of Reply letters to show cause notice; appeal etc. received from the Authority from time to time;
3. Drafting of clarification letter against the queries received from the Authority from time to time;
4. Preparing of data with all the details related to number and types of apartments or plots, garages booked etc.;
5. Assisting client and other stakeholders in obtaining the certificates under the Act as and when required;
6. Help in maintaining web page and also providing information as are required to be mentioned on that web page;
7. Providing consultancy/opinion with respect to various transaction under RERA and other connected laws;

Conclusion: -

The Real estate Regulation and Development Act, (RERA), 2016 is a revolutionary act of the parliament of India in the history of the Indian real estate sector. RERA, which has made an amicable change in the real estate sector, is an emerging opportunity for all professionals, especially for governance professionals like Company Secretaries. Investors and lenders are looking at India as a lucrative market especially with the rollout of RERA. One can confidently believe that a career as company secretary is not only exciting but also rewarding. RERA had elevated the role of Company Secretary Professionals. A Company Secretary plays a forthcoming role in the arena of RERA in the form of Consultant, Representative, Company Secretary, Compliance Expert and compliance officer.

“Opportunity is everywhere. The key is to develop the vision to see it.” – An opportunity is always around us and we just need to have a vision and desire to grab it. A good professional attitude will lead to a better career growth and success.

Disclaimer: Every effort has been made to avoid errors or omissions in this material. In spite of this, errors may creep in. Any mistake, error or discrepancy noted may be brought to our notice which shall be taken care of in the next edition. In no event the author shall be liable for any direct, indirect, special or incidental damage resulting from or arising out of or in connection with the use of this information.

Artificial Intelligence in Finance

Introduction

Artificial Intelligence (AI) is having significant impact in the area of finance. AI-enabled finance systems are a necessary for entities to overcome fast paced competition prevalent in the industry. AI based models are implemented widely due to technological advancement, user acceptance and changing regulatory frameworks. Entities using AI can streamline tedious processes and vastly improve the customer experience by providing access to their accounts and financial advisory services.

AI in finance helps in flexibility and improvement of existing systems. AI system can be constantly improved and re-modelled through continuous learning and re-learning of data patterns. AI has become an unavoidable part of the finance industry, and it is getting better with time. It may take few more years to reach the full potential of AI and machine learning.

With the advent of AI, routine tasks have been overtaken by technology, changing the manner in which work is handled across industries. Finance is no exception, with tech solutions being introduced for many of its operations. Customers do not have the time and patience for handling manual reviews and difficulties caused by wrong data in their activities.

Benefits

Delivering Personalized Solutions: AI maintains consumer interactions with the help of chatbots and other machine learning tools. AI services assists in providing customers with financial consciousness considering customer's spending patterns and goals such that a customer can have an exact understanding on how much to spend, save and invest based on the available insights.

Effective Cost Saving: AI has automated numerous activities resulting in reduced costs in several sectors such as customer service department where the automated process taken over the manual workforce. AI application is reducing the costs and providing comfortable and efficient financial channels which are easy to access. Hence, the financial sector is now attracting more consumers who were earlier uncomfortable due the tedious financial processes.

Ease in Decision Making: AI works on variety of data collected from various sources and processes this data to provide outcomes that are data-driven having logical base. This facilitates experts in seeking recommendation from systems for making accurate forecasts. Consumers are enabled in getting financial portfolio managed without any management fee rather than availing services from traditional advisors who charges bulk share from investment.

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-AI in finance helps in flexibility and improvement of existing systems. AI system can be constantly improved and re-modelled through continuous learning and re-learning of data patterns. AI has become an unavoidable part of the finance industry, and it is getting better with time”

CS Arun Kumar V.K
Cheraman Financial Services Ltd
Email ID: icsarunkumar.vk@gmail.com



Identification of Fraud: Even though AI platforms provide ease in transactions, there are inherent challenges of cybercrime and thefts. Therefore, online processes involving money transaction and private details need to be secured for building consumer trust. AI helps to develop a safe transaction environment which is breach-proof, and which is an improvisation to traditional models where the breach is reported after crime. AI systems create continuous monitoring of transactions which helps to overcome fraud.

Minimal Human Error: AI process automation and use of machine tools helps in efficient decision making which is not error prone. AI in finance is developed through creative research and understanding of data collected over longer time period. This facilitates in developing full proof solutions. AI introduces automation in fields that require precision to safeguard customer trust.

Faster Data Processing: Large volumes of data can be processed and actionable information can be extracted with the use of AI in finance. With the increasing data in each passing day, the systems need to be more efficient for data processing. Fast processing of data collected from social media platforms, online transactions, emails etc are possible with the use of AI which helps in creating future market strategies.

Applications

Lending: Entities can automate evaluation of credit applications through document capture technologies. AI algorithms helps in review and check of pay slips, invoices and other financial documents effortlessly. Automatically capture document data and handle lending operations with minimal human interference. This helps entities to complete credit applications easily and with minor errors. Suitable data can be captured by entities via cash flow statements and other financial documents of the borrowers. The extracted data allows entities to offer faster services for their lending operations and enabling more accurate handling of credit evaluation.



Credit Score: AI helps entities in easy and precise leveraging of credit applications. AI tools implements predictive models for examining credit scores of applicants, allows reduction in regulatory expense, compliance and improved decision making. Techniques such as machine learning provide for examination of financial information through AI and generate understanding of financials. It helps to reduce the tedious process of carrying out larger calculations using spreadsheets and other financial documents, thereby provides for improved commercial loan decisions.

Investments: Personal finance requirement can be identified with the use of virtual assistants and AI chatbots, which helps to understand spending amounts and target savings. AI-driven chatbots help solve user queries quickly and efficiently. Tracking outstanding invoices and automating the follow-up collection processes with AI ensures that accounts are kept balanced and closed promptly. Moreover, AI chatbots answer customers' routine questions and can provide support. Robo-advisory provides financial advice for helping investors in managing their portfolio and suggests customized investment portfolio by making use of risk appetite and investment experience of customers.

Operations: The issue of delinquency can be properly addressed by entities with the help of AI by developing an effective debt collection procedure. AI powered capture technology can be used for automating invoice and billing services. This will fasten the business process by minimizing manual errors and expenses and boosting loan recovery.

Account Reconciliation: AI can be adopted by companies to derive data through bank statements and to compare it in intricate spreadsheets. AI allows the account reconciliation procedure to considerably expedite and for any errors, hindering the process to be eradicated.

Insurance: AI enables assessing risk profile of consumers and determining the best possible prices to accompany appropriate insurance plan. This cuts down on costs, minimizes the business operation workflow and also boosts customer satisfaction. AI can manage massive number of documents with regard to review, adjustment, investigation, remittance and document processing. It helps to detect fraudulent claims and ensure that the claims are in adherence with the regulations.

Audit and Compliance: AI technologies keep track of fraudulent activities, enable system security, boost general regulatory compliance matters, and minimize workload and operational expenses caused by fraudulent documents. ML algorithms sift through voluminous data, identify potential fraud issues, and flag them for review to avoid loss of revenue. Data analytics establishes the scope of the audit and risk assessment, facilitates tracking of routine transactions. AI enables Cognitive computing, predictive analytics, and tracking more complex transactions that go with estimates and judgments. AI technology can be used for scanning regulatory and legal documents to keep track of compliance issues. AI goes through numerous documents faster and monitors non-compliant issues with minimal human interference.

Expense Management: AI makes use of algorithms and document capture technologies for travel receipt checks required by expenditure reports for income tax laws, compliance and other related purposes. This reduces compliance risks related to fraud, payroll taxation and prevents non-compliant spending. When manually done, managing expenses related processes is not only filled with complex paperwork but also prone to fraud and data breaches. Expenses management automation ensures almost zero errors and alerts the team to a breach if it occurs.

Customer Service: Adoption of AI technologies helps the entities to detect any irregular patterns and determine risk areas in KYC processes. AI facilitates to reduce errors, boosts security, compliance, faster processing etc. Conversational AI systems help in addressing consumer requests swiftly so that workers can concentrate attention on more complex requests. AI technologies help to identify unresolved and non-undertaken consumer queries, thereby enhancing revenue and customer satisfaction. AI models determine changes in consumer behaviors and predict consumer turn out ratio, by which the entities can identify consumer risk implications.

Trading: AI aids persons with high-risk appetite to decide on whether to purchase, hold and sell a stock and also alerts people having a low-risk appetite when the market has the scope of falling so they can decide on whether to remain invested in the market or to exit it.

Challenges

Quick Paced Learning: Rapid expansion of advanced technology with the arrival of more sophisticated tools and systems in finance setting the pace for quick learning and the adoption of new ways of time and cost-cutting.

Data Security: Most AI applications make use of a significant amount of data for learning and making intelligent decisions. The drawback of utilizing large volumes of data is that it may create a storage issue for businesses. Moreover, data-driven automation in business operations may result in issues related to data security.

Black Box: AI models are black box in nature due to the complex calculations that are hard to comprehend and there is a limited understanding of the output. Without proper training, the entities can lose their customers due to the absence of appropriate explanation.

Updated Technology: Replacing of outdated infrastructure with traditional systems continues to be a major challenge. AI-based systems will be able to achieve more efficiency with substantial infrastructure and high-end processors.

Data integrity: Poor data quality and inaccuracy can lead to poor business outcomes. Data integrity helps to achieve intended results and preventing bad trades and financial loss.

Robustness: Several processes are involved in AI workflow, including data analysis, manipulation, model training, validation, testing monitoring, etc. Timely monitoring and maintenance are of paramount importance to meet the growing data requirement.

Some Real Life Cases

JP Morgan Chase: A global leader in the banking industry, JP Morgan Chase, has developed a proprietary Contract Intelligence (COiN) system that uses unsupervised machine learning algorithms to automatically review and process documents for credit scoring and loan underwriting. With this innovative method, the extraction of 150 attributes from the yearly business credit can be performed in seconds, compared to the traditional approach where lawyers and loan officers spend approximately 360,000 hours per year.

ZestFinance: Los Angeles-based ZestFinance introduced the Zest Automated Machine Learning (ZAML) platform. It is an underwriting solution that helps with credit assessment. Artificial Intelligence here makes it possible to assess borrowers that lack a credit history. Based on a variety of data points, this platform provides an impressive level of transparency. Lenders can now improve the assessment of people who were considered too risky to lend to in the past. ZAML is an end-to-end platform that was built to be implemented and scaled quickly. Auto lenders that implemented ZAML have already cut their annual losses by 25%, according to ZestFinance.

US Bank: US Bank has also developed an machine learning solution, dubbed Expense Wizard. The travel expense management app facilitates cost-control and risk-reduction benefits for financial companies. It helps streamline employees traveling within company policies by applying AI-based chatbots that eliminate the time needed for payment reporting processes.

S&P Global \$ Kensho: In cooperation with Kensho, S&P Global integrates machine learning capabilities allowing government corporations and investment agencies to unlock actionable insights to make solid decisions. With Kensho integrated with the S&P platform, users may get simplified answers to complex financial questions in a Google-search format in minutes, regarding monetary policy changes, economic reports, political events, etc.

Cerebellum Capital: According to the Barclay Hedge survey, 56 percent of hedge fund respondents apply artificial intelligence and machine learning algorithms to streamline alternative investment processes. One of the examples is Cerebellum, a hedge management company that uses AI and machine learning platform to automate investing decisions, covering such processes as data discovery, assessment, model creation, testing, and learning trading strategies.



The world belongs to those who read
- RICK HOLLAND

Help Yourself

Food for Thought

Good Vibes, Good Life

- by Vex King

Disclaimer: This article does not endorse any book and is not sponsored by any author or publication. Content shared here is for knowledge and learning purposes only.

"The Universe is abundant in all areas; the illusion of fear is the only limitation we have." -Vex King

I came across Vex King's quotes many times over on social media as they're very popular and reshared widely. I was delighted to know he has authored a book and was on my reading wish list for a long time.

The Law of attraction would be something you would have come across in many books. The concept of the law of attraction as quoted in various books can be summed up as 'like attracts like.' Our dominant thoughts are what manifests into our lives. Therefore, the law of attraction places a great emphasis on positive thinking. If you're thinking positively, you attract positive things to your life. In short, what you think, you manifest.

This law is quite extensively explained in the book *The Secret* by Rhonda Byrne. The law is also one of the biggest takeaways in the bestseller *'Think and Grow Rich'* by Napoleon Hill and quite often quoted in many self-help books. *'The Alchemist'* also mentions how the Universe conspires in our favour when we truly want something. This law is even criticized widely, one interesting write up is by Mark Manson, the author of *'The Subtle Art of Not Giving a F*ck.'* Though the law appears too rosy and too good to be true, it helped me and many of my friends to combat recurring negative thoughts.

Vex King, the author of the book we are discussing today, came across the law of attraction in *The Secret*. I have written about *The Secret* by Rhonda Byrne in the e-magazine issue of July 2021. The author, at first, thought it was too good to be true and if you check

the above mentioned article, I too had opined that it was too good to be true when I first learnt about it in 2017-18. The author then did trials, experimenting and testing the law, like how most of us who just learnt it, might have.

But this book, as the name Good Vibes suggests (vibe is a popular abbreviation of the word 'vibration') is about something beyond the law of vibration. The author, after reading a lot of self-help books, realized that the law of vibration deeply resonates with him. So, he writes, in very simple words, what the law of vibration means, how it works and how it has helped himself and many others make sense of life from it. Reading about this law immediately took me to the autobiography Wings of Fire by Dr. Abdul Kalam. If you have read the book, you may have already guessed. Let me share the story in short.

When young Kalam started to chase his long cherished dream to fly, that is, join the Air Force, he faced rejection and as a young boy, felt very disappointed. He had gone all the way from his humble town in Rameshwaram to our country's capital, to attend the interview. After what had happened, he decided to go to Haridwar and take a dip in the holy Ganga river. He visited the Swami Sivananda ashram soon after this and the seer, Swami Sivananda who noticed young Kalam's misery told him these words:

Desire, when it stems from the heart and spirit, when it is pure and intense, possesses awesome electromagnetic energy. This energy is released into the sleep state. Each morning it returns to the conscious state reinforced with the cosmic currents. That which has been imaged will surely and certainly be manifested. You can rely, young man, upon this ageless promise as surely as you can rely upon the eternally unbroken promise of sunrise... and of Spring.

I could find a striking similarity between what Vex King explained in his book and the words of the seer and it is quite definite that both of them are talking about the law of vibration.

Now that you have caught a little idea about what the law of vibration could be, it calls for an end to this article, so that not too much about this fascinating law is given away here. I want you to read the book and learn about the law of vibration by yourself, directly from the words of the author. Giving you an acquaintance of one book every month, from genres relevant to corporate professionals, is the objective of articles under this column. Go, explore good vibes and have a good life!

You can check the previous articles written on the books mentioned in this article in the following past editions of this e-magazine:

The Wings of Fire (Autobiography) by Dr. A.P.J. Abdul Kalam with Arun Tiwari- September 2020


The Alchemist by Paulo Coelho- December 2020

Think and Grow Rich by Napoleon Hill- June 2021

The Secret by Rhonda Byrne- July 2021

Columnist:

Aparna U
Executive Student
Email ID: aparnakumar14@gmail.com





REGULATIONS

Regulatory Updates

Companies Act, 2013

Updates on Notifications

MCA has amended Companies (Registration of Charges) Rules, 2014, which shall be known as Companies (Registration of Charges) Second Amendment Rules, 2022.

In the Principal Rules after rule 12, the following rule shall be inserted:

“13. Signing of charge e-forms by insolvency resolution professional or resolution professional or liquidator for companies under resolution or liquidation.-

The Form No.CHG-1, CHG-4, CHG-8 and CHG-9 shall be signed by Insolvency resolution professional or resolution professional or liquidator for companies under resolution or liquidation, as the case may be and filed with the Registrar.

Further, MCA has introduced new Forms.

G.S.R. 664(E)

MCA has amended Companies (Acceptance of Deposits) Rules, 2014, which shall be known as Companies (Acceptance of Deposits) Amendment Rules, 2022

In rule 16 of the Principal rules, after the words “auditor of the company”, the words, letters and figure “and declaration to that effect shall be submitted by the auditor in Form DPT-3” shall be inserted;

MCA has introduced new Forms DPT-3 and DPT-4

G.S.R. 663(E)

SEBI Act, 1992

Updates on Circulars

Amendments to guidelines for preferential issue and institutional placement of units by a listed InvIT

Clause 3.5 of SEBI circular dated November 27, 2019, is modified as under :

”3.5. Post allotment, the InvIT shall make an application for listing of the units to the stock exchange(s) and the units shall be listed within two working days from the date of allotment:

Provided that where the InvIT fails to list the units within the specified time, the monies received shall be refunded through verifiable means within four working days from the date of the allotment, and if any such money is not repaid within such time after the issuer becomes liable to repay it, the InvIT, investment manager of the InvIT and its director or partner who is an officer in default shall, on and from the expiry of the fourth working day, be jointly and severally liable to repay that money with interest at the rate of fifteen percent per annum.”

Sub-paragraph (A) of paragraph 2 of Annexure-I of SEBI circular dated November 27, 2019 , is modified as under:

A. Pricing of frequently traded units

2.1 Where the units of the InvIT are frequently traded, the price of units to be allotted pursuant to the preferential issue shall not be less than higher of the following:

- 2.1.1. the 90 trading days’ volume weighted average price of the related units quoted on the recognised stock exchange preceding the relevant date;
- or
- 2.1.2. the 10 trading days’ volume weighted average prices of the related units quoted on a recognised stock exchange preceding the relevant date.

2.2. A preferential issue of units to “institutional investors” not exceeding five in number, shall be made at a price not less than the 10 trading days’ volume weighted average prices of the related units quoted on a recognised stock exchange preceding the relevant date.

Clause 4.1 of Annexure-I of SEBI circular dated November 27, 2019, is modified as under and the explanation stands deleted:

4.1 Preferential issue of units shall not be made to any person who has sold or transferred any units of the issuer during the 90 trading days preceding the relevant date. Further, where any person belonging to the sponsor(s) has sold/transferred their units of the issuer during the 90 days preceding the relevant date, all sponsors shall be ineligible for allotment of units on a preferential basis.

SEBI/HO/DDHS/DDHS_Div3/P/CIR/2022/0115

Performance/return claimed by unregulated platforms offering algorithmic strategies for trading

It has come to the notice of the Securities and Exchange Board of India (SEBI) that some unregulated platforms are offering algorithmic trading services/Strategies to investors for automated execution of trades. These platforms are claiming high returns to market their services. This may amount to mis-selling of such services and strategies to investors.

In order to prevent such acts and instances of mis-selling and to protect the interest of investors in the securities market, it has been decided that:

4.1. Stock Brokers who provide services relating to algorithmic trading shall not:

- 4.1.1. directly or indirectly make any reference to the past or expected future return/performance of the algorithm; and/or
- 4.1.2. directly or indirectly associate with any platform providing any reference to the past or expected future return/performance of the algorithm

4.2. Stock brokers who are directly/indirectly referring to any past or expected future return/performance of an algorithm or are associated with any platform providing such reference,

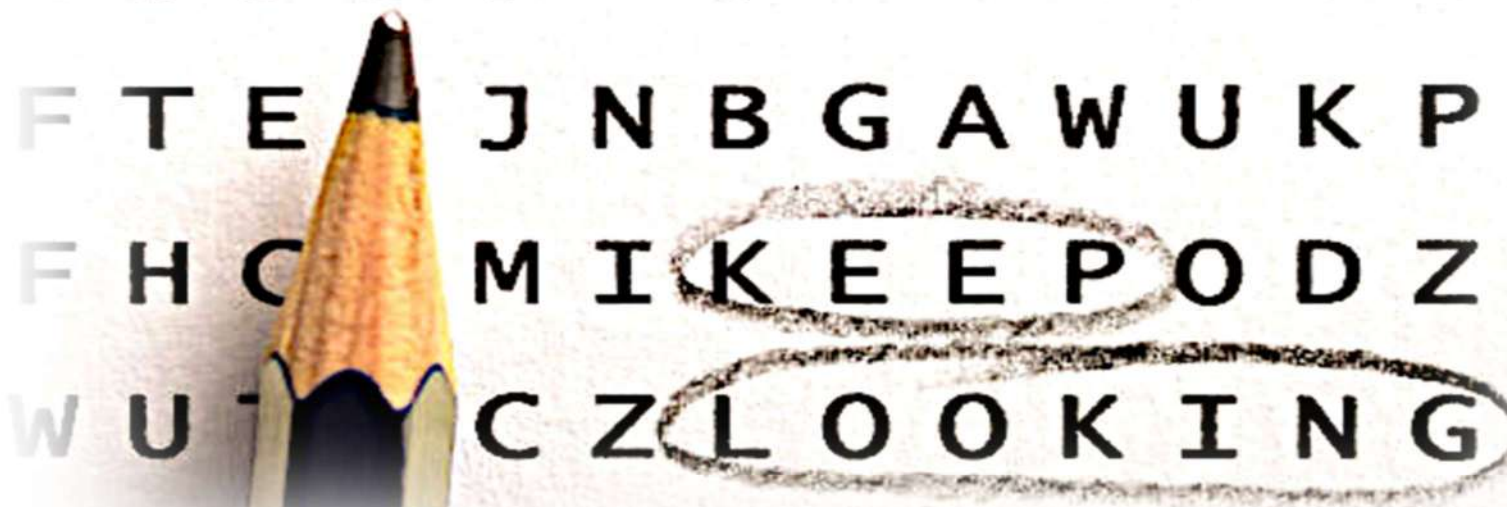
shall remove the same from their website and/or disassociate themselves from the platforms providing such references, as the case may be, with In seven days from the date of this circular.

SEBI/HO/MIRSD/DOP/P/CIR/2022/117

Compiled by:

Mathruka B M
Professional Student
Email ID: mathruka30@gmail.com





Word Search

Based on FEMA

E	J	R	E	P	A	T	R	I	A	T	E	U	C	A	M
H	X	Y	U	I	O	P	K	L	H	G	F	E	O	Z	N
S	Q	C	A	S	D	G	H	K	L	M	X	G	M	X	B
E	W	R	H	W	E	R	T	Y	U	T	J	D	M	S	V
C	E	E	R	A	T	R	Y	U	E	G	E	E	E	D	C
U	R	G	T	C	N	E	Y	R	J	T	H	R	R	C	F
R	T	U	Y	V	E	G	N	H	I	E	G	T	C	V	I
I	Y	L	U	B	R	A	E	B	E	D	J	Y	I	F	R
T	U	A	H	N	L	H	I	E	D	B	M	U	A	B	M
I	I	T	J	M	Y	H	N	M	A	G	N	I	L	H	S
E	O	I	N	T	O	C	V	N	M	R	T	N	M	N	X
S	P	O	M	R	R	T	E	Y	U	M	N	H	N	M	C
G	I	N	P	B	N	D	F	G	J	U	U	E	C	M	V
H	U	W	E	R	T	Y	M	J	U	I	N	M	R	N	B
K	Y	T	H	I	R	T	Y	C	D	E	T	Y	Y	S	N
L	T	A	S	D	F	B	H	Y	T	R	C	V	N	M	N
C	U	R	R	E	N	T	Y	C	A	P	I	T	A	L	A

Questions Based on FEMA

S.NO	WORD SEARCH CLUES
1	Which Act did FEMA replace? Foreign Exchange _____ Act (10).
2	_____ Banks covered under Category I Authorised Dealers (10).
3	These are the Commercial Loans taken by Companies from foreign institutional investors and foreign companies- _____ Commercial Borrowings (8).
4	Activities permitted to authorised dealer under Category I by RBI regulations- _____ (7) and ____ (7) account transactions.
5	A person resident in India making Overseas Investment may make payment by way of swap of _____ (10).
6	A person resident in India who has made ODI and undertaking disinvestment in a foreign entity will report disinvestment within _____ days of receipt of disinvestment proceeds (6).
7	Drawal of Foreign Currency by any person towards payment of commission on exports made towards equity investment in JVs/WOSs abroad of Indian companies is ____ (10).
8	Bringing into India the realised foreign exchange - _____ to India (10).
9	A person resident in India may open, hold and maintain with AD in India a foreign currency account, to be known as a _____ (8) _____ (7) Foreign Currency Account.
10	Single Master Form reporting (5).

Note : Figures in the bracket indicate number of alphabets in the answer word.

Answer in Page 31

Prepared by:

CS Hema Gaitonde
Practising Company Secretary
Email Id: hemagaitonde.cs@gmail.com





Students Corner

Company Secretary (CS) – Strength to Aatma Nirbhar Bharat

India is among the fast-developing nations in the modern world. With huge increase in the growth of the population, there is huge competition in various field to get employed. Therefore, the Government of India has taken initiative called “Aatma Nirbhar Bharat Abhiyaan or Self-reliant India campaign”. It is the vision of new India envisaged by the Hon'ble Prime Minister Shri Narendra Modi.

The Government of India aims to make the country and its citizens independent and self-reliant in all respects. The Government further outlined five pillars of Aatma Nirbhar Bharat – Economy, Infrastructure, System, Vibrant Demography and Demand.

Company Secretary- A Boon to Aatma Nirbhar Bharat

Company Secretary is one of the most crucial profession in India. Due to their expertise and wide knowledge in corporate matters, Taxation Laws, Accounting Standards, Labour Laws, Intellectual Property Laws, Foreign Exchange Laws, Reserve Bank Guidelines, Real Estate Laws, other Local and International Laws and other such laws, they add value to the new enterprises and start-ups. Company Secretaries are playing a vital role in compliance of theme called “Corporate governance” and other important areas to support Aatma Nirbhar Bharat.

A Company Secretary is also known as Chartered Secretary or Compliance Officer. They indirectly help and support Government in numerous ways. Corporates are one of the major sources of income for the government. If corporates are complying with laws, rules and regulations it means they are paying taxes regularly, adopting best corporate governance practices which further ensures that there are no malpractices, fraud, corruption going on in the corporate world.

It's the company secretary who ensures that all the laws rules and regulations are compiled by the company. A Company Secretary is essentially responsible for ensuring compliance of various laws mainly the Companies Act, 2013 which are applicable to the company in which the Company secretary is appointed.

Similarly, business organization other than corporates such as sole proprietorship, partnership firm, LLP, MSMEs, etc. also contributes significantly to the economy of the country with the assistance of services provided by a Company Secretary. If all these business organizations are complying with laws rules and regulations, then there will be a less need for the government to interfere and scrutinize the functioning of such entities.

Government can focus on other important issues that are going on in the country rather than investing their crucial time in investigating companies and other business organizations which company secretaries are handling diligently. Hence company secretaries aid the government by avoiding wrongdoings, frauds, corruption, tax evasion, etc. by different types of entities.

Adherence to Corporate Governance

The Company Secretary support the Indian entrepreneurs to adhere with the corporate governance in order to be successful entrepreneur. The entrepreneurs must be freed from the shackles by adopting suitable governance models and reforming laws.

To boost investments, the central government implemented numerous policy reforms and Company Secretary plays a key role in such adherence.

Appointing a CS can help entities to be compliant and reduce the risk of paying penalties.

Role of Company Secretary in the MSME Sector

The role of the Company Secretary under the new Companies Act are considered to be that of 'Governance Professional' and in view of this their role in business ecosystem has increased prodigiously.

Right from assisting the owners / management of the organization in procuring capital, registration of the company, obtaining of certificate of commencement of business, advising the board / management on both organic and inorganic growth of business and in case, the business becomes unsustainable then its winding-up, Company Secretary plays a significant role.

MSME sector has been the backbone of the Indian economy. Various schemes offered by the Government of India to strengthen the sector. The MSME sector contributes notably to the country's overall industrial production output, employment and exports. It is recognized with generating the maximum employment growth as well as accounting for a major share of industrial production and exports.

Micro, Small and Medium Enterprises (MSME) sector has emerged as a highly vibrant and dynamic sector of the Indian economy over the last five decades. The MSME also play an important role in the development of the economy with their effective, efficient, flexible and innovative entrepreneurial spirit.

The Initiative of 'Aatma Nirbhar Bharat Abhiyaan' or 'Self-Reliant India Movement', wherein five vital areas have been focused -it is the Company Secretary who possess the potential to make a valuable contribution in accelerating the pace of economic development through their professional expertise in MSME sector.

Funding Including Foreign Funding

In the emerging scenario the role of professional play a very vital role to make Indians self-reliant. Company Secretary as a professional play a key role in the various sectors or initiative of the government. One of the lead roles played is in decision making of maintaining a balance between own funds and borrowed funds. Further they are in charge of complying with the laws and regulations under FEMA when there is inflow and outflow of funds from or to abroad as applicable.

Conclusion:

By ensuring adherence to all the applicable laws, the CS acts as a facilitator and saviour for entities which form important part of

economy. In turn they help in achieving Government’s noble initiative of ‘Aatma Nirbhar Bharat’. The scope for CS is ever growing and they continue to be one of the strongest pillars for supporting the economy.

Author:

Ankit Patidar
 CS Final Trainee
 Email Id: ankitpatidar902@gmail.com



WORD SEARCH
 (Based on FEMA)

CS Hema Gaitonde, PCS Mumbai
 Email ID: hemagaitonde.cs@gmail.com

⁹ E	J	⁸ R	E	P	A	T	R	I	A	T	E	U	² C	A	M
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G	I	N	⁷ P	B	N	D	F	G	J	U	U	E	C	M	V
H	U	W	E	R	T	Y	M	J	U	I	N	M	R	N	B
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⁴ C	U	R	R	E	N	T	Y	⁴ C	A	P	I	T	A	L	A



Concept captured

Group of Companies Doctrine – A Company is known by the company it keeps. Or is it?

Some of the core principles of corporate law and of contract law are focused upon isolating entities involved in transactions from other connected entities, which are not directly involved in the transactions in question.

Corporate personhood, which forms the edifice of company law holds that the company is an entity independent of the humans who are associated with it, and by extension implies that it is independent of other companies associated with it.

Similarly, the doctrine of privity of contract ensures that when two parties enter into a contract, the rights and obligations of the contract do not encompass a third party.

There are, no doubt, exceptions to these principles both in statutes and in case law. One such exception, which has recently been in the news, is the Group of Companies doctrine.

An arbitration is a consensual adjudication process. Parties can agree to have their disputes adjudicated by arbitration either after the dispute arises or can provide for referring any future disputes in the agreements that they enter into. If there is no agreement between the parties, the aggrieved party will have to approach the jurisdictional civil court for redressal of its claims.

But transactions in the world of commerce are not always as simple as an agreement between two parties for exchange of goods or services for consideration. They often are contingent upon other transactions or subsistence of relationships which are not explicitly within the ambit of the primary transaction.

If, for example, A pays money to B for the construction of a building, knowing that a large portion of this money would be channelled to C, which is a sister concern of B, for the procurement of raw material, and then there is a dispute that arises regarding the quality and supply of the raw material, would A be justified in initiating arbitration against both B & C?

This is a question that has reared its head repeatedly in arbitration law and has found some answers in the statutes, as also from the principles evolved and precedents laid down by the courts.

One Indian forerunner in this field was the judgment of the Supreme Court in Chloro Controls India Pvt. Ltd. v. Severn Trent Water Purification Inc. (2013) 1 SCC 641. The Court had held that even parties who were not signatories to the agreement containing the arbitration clause could be included in the arbitration if the third party being looped in was claiming through or under one of the parties to the arbitration. This was possible because Section 45 of the Arbitration and Conciliation Act, 1996, which dealt with enforcement of foreign arbitral awards, provided that “a judicial authority, when seized of an action in a matter in respect of which the parties have made an agreement referred to in section 44, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.” (Emphasis supplied)

A similar clause was not to be seen in the provisions dealing with arbitrations seated in India at the time. However, this was remedied by the 2015 amendment to the Arbitration and Conciliation Act, which incorporated similar language in Section of the Arbitration and Conciliation Act.

The principle was then extended to domestic arbitration in the case of Ameet Lalchand Shah v. Rishabh Enterprises (2018) 15 SCC 678. Though the Court did not explicitly invoke the Group of Companies Doctrine, its reliance on Chloro Controls demonstrates that it is part of the same thought process.

This stood in contrast to Duro Felguera v. Gangavaram Port Ltd. (2017) 9 SCC 729, where the Court refused to direct a joint arbitration in respect of 5 contracts, all of which involved sister concerns on one side.

Thereafter in Cheran Properties v. Kasturi & Sons Ltd. (2018) 16 SCC 413, the Court harmonized the two conflicting judgments mentioned immediately above by noting that the Court may look into the real intention of the parties.

Several judgments thereafter upheld the Group of Companies doctrine and applied it, most recently in Oil and Natural Gas Corporation v. Discovery Enterprises Pvt. Ltd. (Civil Appeal 2042 of 2022) decided on 27th April 2022.

However, this comfortable position may be soon set to change, or at least be opened up for reconsideration. The Supreme Court in its judgement on 7th May 2022, in Cox and Kings Ltd. v. SAP India Pvt. Ltd. found fit to revisit the suitability of Group of Companies Doctrine and referred the following questions to a larger bench for consideration:

- (a) “Whether phrase ‘claiming through or under’ in Sections 8 and 11 could be interpreted to include ‘Group of Companies’ doctrine?”
- (b) Whether the ‘Group of companies’ doctrine as expounded by Chloro Control Case (supra) and subsequent judgments are valid in law?
- (c) Whether the Group of Companies Doctrine should be read into Section 8 of the Act or whether it can exist in Indian jurisprudence independent of any statutory provision?
- (d) Whether the Group of Companies Doctrine should continue to be invoked on the basis of the principle of ‘single economic reality’?





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Company Secretaries of India**

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